

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate the House Principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Codification

Codification is the process of compiling, updating, and systematically arranging the special acts that comprise a special district's charter. After a special district's charter is created by special act of the Legislature, the original charter provisions may be amended by subsequent special acts. However, special act amendments are not automatically incorporated into one special act charter. Therefore, in order to ascertain the current status of a special district's charter, it is necessary to locate all special acts amending a district's original charter. This can often be a difficult and time-consuming process for persons interested in determining the current status of a district's charter. Codification of special district charters is important because it permits readers to easily locate and identify the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature in ss. 189.429 and 191.015, F.S., both of which were amended in 1998. The laws provide for codification of all special district charters by December 1, 2004. Any codified act relating to a special district must provide for the repeal of all prior special acts relating to the district. The 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law: (1) shall not be construed to grant additional authority nor supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

To date, 173 special districts have codified their charters.

Status Statement Language

Section 189.404(5), F.S., provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform to the department's determination or declaratory statement regarding the status of the district.

North Springs Improvement District

The North Springs Improvement District (District) was created was created by the decree of circuit court #71-1724, which has been revised by subsequent special acts.

The purpose of the District is to fund, construct, and maintain storm water management, water distribution, sewer collection and road-way improvements. The boundaries of the District are approximately 7,040 acres within Broward County. The District is governed by a three-member board of supervisors. One supervisor is elected by landowners owning property within the city limits of the City of Parkland, one supervisor is elected by landowners, owning property within the city limits of the City of Coral Springs, and one supervisor is elected at large by all landowners of the District. Board members receive \$100 per month as compensation and travel expenses.

The Board must annually adopt a resolution establishing the non-ad valorem special assessments necessary to meet expenses for the coming year. Special assessments are collected and enforced in the same manner as county taxes. The District does not levy ad valorem taxes. However, the charter exempts all real and personal property owned, leased, controlled, or used by the District from all county, municipal, taxing district, and other ad valorem taxes and special assessments for benefits. [Please refer to "Constitutional Issues" of this Analysis for additional information.]

The Board may issue bonds to carry out the purposes of its charter payable solely from revenues of the District. The value of all bonds outstanding may not exceed 35% of the District's anticipated revenues for the period for which the bonds are outstanding.

The current powers and authority of the District include the authority to:

- contract and be contracted with;
- adopt a water control plan;
- acquire and maintain sites for storage and maintenance of the equipment of the District;
- clean out, straighten, widen, open up, or change the course and flow, alter, or deepen any canal, ditch, drain, river, water course, or natural stream;
- regulate by resolution drainage requirements;
- borrow money and issue bonds, certificates, warrants, notes, or other evidences of indebtedness of the District;
- build and construct any other works, and improvements across, through, or over any public right-of-way, highway, grade, fill, or cut in or out of the District;
- hold, control, and acquire by donation, purchase, or condemnation, any easement, reservation, or dedication in the District; to condemn as provided by chapters 73 and 74, F.S., or acquire, by purchase or grant for use in the District any land or property within the District;
- assess and impose on all of the lands in the District an ad valorem tax, an annual drainage tax, and a maintenance tax;
- impose and foreclose special assessments liens;
- prohibit, regulate, and restrict by appropriate resolution all structures, materials, and things, whether solid, liquid, or gas, whether permanent or temporary in nature, which come upon, come into, connect to, or be a part of any facility owned or operated by the District;
- make adopt, promulgate, amend, and repeal all rules and regulations necessary or convenient for the carrying out of the duties, obligations, and powers conferred on the District;
- cooperate with or contract with other water control districts or other governmental agencies;
- employ engineers, attorneys, agents, employees, and representatives as the board of supervisors may determine necessary and to fix their compensation and duties;
- exercise all of the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes of the District;
- construct, improve, and maintain roadways and roads necessary and convenient to provide access to and efficient development of areas within the District;
- make use of any public easements, dedications to public use, platted reservations for public purposes, or any reservations for drainage purposes within the boundaries of the District;
- lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the District is authorized to undertake and facilities or property of any nature for the use of the District;
- regulate the supply and level of water within the District;
- own, acquire, construct, reconstruct, equip, operate, maintain, extend, and improve water systems and sewer systems or combined water and sewer systems;
- own, acquire, construct, operate, and maintain parks, playgrounds, picnic grounds, camping facilities, and water recreation facilities within or without the District;
- issue general obligation bonds, revenue bonds, assessment bonds, or any other bonds or obligations; and
- exercise any and all other powers conferred to water control districts by ch. 298, F.S.

Effect of Proposed Changes

This bill codifies and reenacts the District's charter, including the provisions described above. However, the bill also includes several changes to the District's current charter, including the following:

- increasing the compensation of the board members from \$100 to \$200 per month;
- authorizing the District to plan, establish, construct, and maintain parks and facilities for indoor and outdoor community recreational and cultural uses, when authorized by resolution of the general purpose unit of local government, in its sole discretion, and also authorized by resolution of each municipality served by the District if the parks and facilities are or will be located in the unincorporated area; and
- authorizing the District to construct or renovate school buildings and related structures, when authorized by the local district school board, which may be leased, sold, or donated to the school district, for use in the public educational system.

C. SECTION DIRECTORY:

- Section 1. Provides that the bill constitutes the codification of all special acts relating to the District; provides legislative intent.
- Section 2. Codifies, reenacts, amends, and repeals chapters 71-580, 84-398, 85-387, 87-505, 89-440, 91-353, 92-245, 94-445, and 96-537, L.O.F.
- Section 3. Recreates and re-enacts the District's charter.
- Section 4. Repeals chapters 71-580, 84-398, 85-387, 87-505, 89-440, 91-353, 92-245, 94-445, and 96-537, L.O.F.
- Section 5. Provides for severability.
- Section 6. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 3, 2004

WHERE? *Sun-Sentinel*, Fort Lauderdale, Broward County, Boca Raton, Palm Beach County, Miami, Miami-Dade County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Tax Exemption

The following existing exemption from taxation, which includes an exemption from ad valorem taxation, is codified in section 41 of the charter:

As the exercise of the powers conferred by this act constitute the performance of essential public functions, and as the projects of the district will constitute public property used for public purposes, all assets and properties of the district, and all bonds issued hereunder and interest paid thereon, and all fees, charges, and other revenues derived by the district from the projects provided by this act shall be exempt from all taxes by the state or by any political subdivision, agency, or instrumentality thereof; provided, however, that nothing in this act shall be deemed to exempt from taxation any property, project, facility, or business activity or enterprise that cannot validly be undertaken as a public function by special taxing districts or other public bodies under the laws and constitution of this state; and further, that nothing in this act shall be deemed to exempt any property, project, facility, or business activity or enterprise of the district, or revenues derived therefrom, which would be subject to taxation under the general laws of Florida if such property, project, or facility were owned or undertaken by a municipal corporation.

Property owned by governmental entities is subject to ad valorem taxation unless immune or exempt, and such exemptions are strictly construed against party claiming them. Immunity from taxation precludes the power to tax, while an exemption from taxation presupposes the existence of the power to tax but the power is limited by a constitutional or statutory provision. The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

Special districts are not immune from taxation. Therefore, property owned by special districts is taxable unless the Legislature enacts an exemption from taxation that is consistent with the Florida Constitution. Section 189.403(1), F.S., provides that special districts are treated as municipalities for purposes of s. 196.199(1), F.S., which exempts from ad valorem taxation property owned by a municipality and used for “governmental, municipal, or public purposes”. Thus, property owned by a special district may be entitled to exemption only if used for a governmental or public purpose.

If a private entity leases government owned property from an exempt governmental entity, such as a special district, the actual use of the property determines whether an exemption from ad valorem taxation continues to apply. If public property is leased to a private entity, but is not used for a “public purpose”, the fee interest in the property is taxable. The “public purpose” standard applicable in tax exemption cases is the “governmental-governmental” standard under which property leased to private entities for “governmental-proprietary” activities is not tax exempt. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). Non-exempt “governmental-proprietary” use occurs when a nongovernmental lessee utilizes public property for proprietary and for-profit aims to promote the comfort, convenience, safety and happiness of citizens. Conversely, exempt “governmental-governmental” use occurs when a lease of public property concerns the administration of some phase of government. See *Capitol City Country Club v. Tucker*, 448 So.2d 613 (Fla. 1993).

Prohibited Special Laws

Article III, s. 11(a)(7), of the State Constitution prohibits special laws pertaining to conditions precedent to bringing any civil or criminal proceedings, or limitations of time therefor. Section 56 of the charter of the District, which is reenacted by this bill, provides:

Suits against the district. □ □ No suit or action shall be brought or maintained against the district for damages arising out of tort or breach of contract, including, without limitation, any claim arising upon account of an act causing a wrongful death, unless written notice of such claim is received within 180 days after receiving the alleged injury given to the secretary of the board, with detailed specifications as to the time, place, and manner of injury. No such suit or action shall be brought or maintained unless brought within 24 months after the time of the injury or damages.¹

¹ There is little case law specifically interpreting this constitutional section, which was enacted in 1968. See *Burgess v. Miller*, 492 F.Supp. 1284, 1288 (N.D. Fla. 1980), barred a twelve month statute of limitations found in a 1937 special act

B. RULE-MAKING AUTHORITY:

The bill grants rule-making authority to the District.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Notice

The published notice of intent to seek legislation states that this act is re-codifying the existing charter of the North Springs Improvement District (of Broward County) as required by section 189.429, F.S.; the notice does not state that the charter is being amended.

Status Statement

The bill does not provide that the district is an independent special district pursuant to section 189.404(5), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.